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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

)
Amendment of Part 90 of the)
Commission's Rules to)
Eliminate Separate Licensing)
of End Users of Specialized)
Mobile Radio Systems)

PR Docket No. 92-79

To: The Commission

REPLY COMMENTS

OF

FLEET CALL, INC.

FLEET CALL, INC.

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July 6, 1992

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
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REPLY COMMENTS OF FLEET CALL, INC.

On May 5, 1992, the Commission released a Notice of Proposed Rulemaking (the "Notice")1/ to eliminate separate licensing requirements for end users of Specialized Mobile Radio ("SMR") systems.2/ The Notice also proposed simplifying the Commission's mobile loading reporting requirements for SMR systems. The Commission stated that doing away with individual SMR end user licensing would eliminate processing of approximately 40,000 end

2/ Section 90.655 of the Commission's Rules requires end users of conventional and trunked SMR systems to license their associated control points, control stations and mobile radio stations.

user licensing applications annually resulting in "enormous savings to the public and the Commission."3/

In lieu of individual licensing, the Notice proposed authorizing end users to operate under the SMR base station licensee's "blanket license." The base station licensee would be responsible for exercising effective operational control over all mobile and control stations using the base station facilities, including compliance with Federal Aviation Act ("FAA") antenna height and lighting restrictions, the National Environmental Policy Act ("NEPA"),4/ and all applicable Commission Rules and Regulations.

On June 11, 1992, Fleet Call filed Comments supporting the Commission's proposal. Fleet Call observed that end user licensing has become essentially a ministerial or mechanical matter largely undertaken by radio dealers and sales agents on behalf of the customer. It imposes unnecessary administrative overhead on service providers, equipment dealers and customers to prepare and file the end user licensing applications and to amend them as required, not to mention a \$35 filing fee for each such filing.5/

3/ Notice at para. 4.

4/ Base station licensees would be responsible for determining whether end users' facilities would have a significant impact on the human environment.

5/ The licensing process is a very labor-intensive one; it typically requires a salesperson to obtain information from the customer about its business, the salesperson communicating that information to a license application preparer, the preparer delivering the application to the customer, the customer reviewing the application and signing it, the preparer forwarding the
(continued...)

The Commission staff must devote substantial resources to process SMR end user applications and issue licenses. Accordingly, Fleet Call concluded that the Commission can more efficiently and economically meet its statutory radio licensing responsibilities by authorizing end users under the SMR base station authorization.^{6/}

II. DISCUSSION

Fleet Call continues to support the Commission's proposal to eliminate separate licensing of SMR end users. No commentor has demonstrated that the Communications Act of 1934, as amended (the "Act"), or the Commission's rules, regulations or licensing policies require that SMR end users continue to be individually licensed or that they cannot be authorized under the SMR base station license. Nor has any commentor demonstrated that continued individual licensing of SMR end users is in the public interest. The Commission has explained how essential licensing information will be collected and maintained without individual end user licensing. The Notice is a proposal to reduce administrative burdens on SMR systems and the Commission's staff. It presents only internal SMR licensing management issues and, contrary to the suggestions of some commentors, would have no impact on the private

^{5/}(...continued)
application to the Commission and the customer completing a temporary permit.

^{6/} Advanced SMR systems, such as Fleet Call's Enhanced Specialized Mobile Radio ("ESMR") systems, will be able to provide service for thousands of additional end users, making the Commission's proposal particularly significant for those operators. See Comments of Fleet Call, Inc. at p. 2; Comments of Ram Mobile Data USA Limited Partnership at pp. 2-3.

carrier status of SMRs.

A. Implementation Issues

In its Comments, Fleet Call stated that requiring SMR licensees to determine loading based on a six months average, rather than a "snapshot" at their loading deadline, would penalize licensees that achieve full loading just before the deadline.^{7/} Fleet Call endorses the American Mobile Telecommunications Association's ("AMTA") comments on this point.^{8/} AMTA notes that the six months proposal would prevent a system that reaches full loading from applying for additional channels to expand capacity until its six months average reaches 70 mobiles per channel. The National Association of Business and Educational Radio, Inc. ("NABER") also notes that averaging would require an operator to "tolerate extremely loaded systems over a significant period of time to allow the system's average to increase, while other spectrum may lie fallow in the area."^{9/}

Fleet Call also endorses AMTA's suggestion that the SMR base station licensee be held responsible for customer actions within its reasonable knowledge or control. An operator should not be responsible for customer violations taken without the operator's knowledge and which the operator had no knowledge of despite its

^{7/} Comments of Fleet Call, Inc. at p. 9.

^{8/} Comments of AMTA at pp. 10-11.

^{9/} Comments of NABER at p. 5. NABER also points out that the proposed averaging would prevent licensees from converting their systems to trunked operation for six months after the system loading reaches 70 units.

exercise of reasonable control over its system to promote regulatory compliance.^{10/}

As discussed in its Comments, Fleet Call applauds the Commission's proposal to develop a compliance checklist for customers.^{11/} Fleet Call agrees with AMTA that a checklist will make it easier for SMR base station licensees to ensure customer compliance with the Commission's Rules. The Commission should provide additional guidance in developing such a checklist.

A few commentors state that the Notice failed to explain why eliminating end user licensing is justified given that only two years ago the Private Radio Bureau concluded that end user licensing provided necessary licensing information and that there were no viable alternatives to obtain this information.^{12/}

Fleet Call addressed this in its Comments.^{13/} In 1990, the Private Radio Bureau (the "Bureau") dismissed an industry proposal to eliminate SMR end user licensing largely because it saw no alternative ways to collect mobile loading information.^{14/} The instant Notice, initiated on the Commission's own motion, addresses these concerns and concludes that mobile loading information

^{10/} Comments of AMTA at pp. 6-8. See also Comments of Idaho Communications, L.P.

^{11/} Comments of Fleet Call, Inc. at pp. 7-8.

^{12/} See e.g., Comments of GTE Mobilnet Incorporated and Contel Cellular, Inc.

^{13/} Comments of Fleet Call, Inc. at pp. 6-7.

^{14/} Amendment of Part 90 of the Commission's Rules to Modify Application Requirements for End Users of Specialized Mobile Radio Systems, 5 FCC Rcd 2975 (1990).

generated from SMR base station licensee business records can be used for administering current loading-related spectrum management licensing requirements. In addition, as discussed above, the base station licensee can take over responsibility for NEPA and FAA compliance. Thus, eliminating end user licensing, as proposed in the Notice, would not undermine administration or enforcement of any existing SMR licensing requirements.^{15/}

B. Private Carrier Issues

The Commission stated that reducing unnecessary administrative procedures by eliminating individual licensing of SMR end users would not change the private carrier status of SMR licensees.^{16/} Despite this, commentators representing common carrier interests assert that eliminating end user licensing will further blur distinctions between regulated cellular common carriers and unregulated SMRs and allow SMRs to function similarly to common carriers.^{17/} These commentators do not allege that end user

^{15/} Fleet Call opposes suggestions that end user licensing information be submitted in affidavit form or that additional penalties be enacted for failure to demonstrate sufficient loading in support of an application. The Commission's Rules already require licensees to provide truthful, accurate information and contain ample authority to enforce this requirement.

^{16/} Notice at n. 11.

^{17/} See e.g., Comments of the Cellular Telecommunications Industry Association, Inc., Comments of the National Association of Regulatory Utility Commissioners ("NARUC"). One commentator incorrectly states that eliminating end user licensing would enable SMRs to offer customized combinations of two way message and dispatch service, "while insulating the SMR operator from state utility regulation, from common carrier obligations such as the duty to provide service on a nondiscriminatory basis, and from limitations on foreign ownership." Comments of McCaw Cellular
(continued...)

licensing should be maintained because it serves the public interest, but merely argue to preserve this additional regulatory burden upon SMRs for competitive advantage. They argue that eliminating end user licensing makes SMRs common carriers and assert that this proceeding should be used to undertake a comprehensive reassessment of the private carrier standard.

These comments are legally incorrect.^{18/} Section 332 of the Act provides a clear demarcation between private and common carrier mobile communications services. It unambiguously provides that resale of interconnected common carrier telephone services or facilities is the determinant of whether an SMR is providing a private land mobile service. An SMR is a private land mobile radio system unless, if interconnected, it resells common carrier telephone services or facilities for a profit. The test is not whether an SMR is providing services that are functionally similar to those a common carrier provides. Rather, the distinction between private and common carrier land mobile services in Section

^{17/}(...continued)
Communications, Inc. at p. 10. All of these characteristics exist today and are independent of eliminating individual SMR end user licensing.

^{18/} In NARUC's case, it represents yet another repetition of what NARUC mistakenly describes as the "functional test" of whether mobile services are private or common carriage. Fleet Call is losing count of the number of times NARUC has proffered this argument since 1975. Once again, NARUC summarily rejects numerous Commission decisions and rulemakings, court affirmations and Congressional dictates. Moreover, NARUC admits that end user licensing is not relevant to any statutory analysis distinguishing private and common carrier radio services. See Comments of NARUC at p. 3. Eliminating end user licensing has no effect on the private carrier status of ESMR or other advanced SMR systems.

332 stems from whether the licensee is engaged functionally in providing the telephone service or facilities of a common carrier as part of its service offering.19/

An SMR continues to provide a private land mobile service so long as it complies with the restrictions on for-profit resale of interconnected service.20/ There is nothing in the Act, the legislative history or implementing Commission rulemakings making individual end user licensing an ingredient of private carrier status. Eliminating individual end user licensing, as proposed in the Notice, has no effect on the private carrier status of SMR systems.21/

19/ H.R. Report No. 97-765, 97th Congress, 2nd Session (1982) at p. 55.

20/ See Interconnection of Private Radio Systems, 93 FCC 2d 1111.

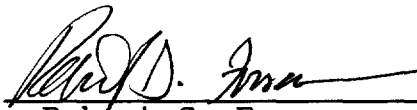
21/ The complaint of the cellular commentators that they must compete with SMRs with their "hands tied behind their backs" is specious at best. See e.g., Comments of GTE Mobilnet. Cellular operators have significant competitive advantages over SMRs in terms of access to a larger, contiguous block of spectrum in each service area, technical/interference obstacles, control of interconnection, marketing and consumer recognition, no loading standards, ability to accumulate adjacent markets without loading requirements and a headstart of nearly a decade in developing roaming/wide-area service capabilities. SMRs are relieved of state rate and entry regulation, but only a handful of states impose any meaningful regulation of cellular services.

III. CONCLUSION

Accordingly, Fleet Call supports eliminating separate end user licensing as proposed in the Notice with the modifications discussed herein and in its original Comments.

Respectfully submitted,

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Dated: July 6, 1992

CERTIFICATE OF SERVICE

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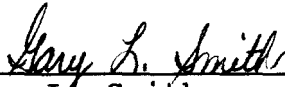
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